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August 15, 1997

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket 95-88
RM-8641, RM-8688, RM-8689

Dear Mr. Caton:

Transmitted herewith, on behalf of Bruce S. Cotton, are an original and four copies of his "Request for Leave to File Reply and Reply to Answer to Response to Supplement to Petition for Reconsideration" in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for Bruce S. Cotton

Enclosures

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BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	MM DOCKET NO. 95-88
)	
Amendment of Section 73.202(b),)	RM-8641
Table of Allotments,)	RM-8688
FM Broadcast Stations.)	RM-8689
(Rose Hill, Trenton, Aurora, and)	
Ocracoke, North Carolina))	

Directed to: Chief, Allocations Branch

**REQUEST FOR LEAVE TO FILE REPLY AND REPLY TO ANSWER TO
RESPONSE TO SUPPLEMENT TO PETITION FOR RECONSIDERATION**

Bruce S. Cotton, by his attorneys, hereby respectfully submits his Reply to the "Answer to Response to Supplement to Petition for Reconsideration" ("Answer") filed in the above-captioned proceeding by Conner Media Corporation ("CMC") on July 25, 1997. Cotton respectfully requests that his Reply be accepted and considered in the above-captioned proceeding. Cotton recognizes that the submission of such a Reply ordinarily is not contemplated by the Commission's Rules. Nonetheless, in this instance, a reply is necessary to correct the false impressions left by CMC's "Answer" and to set the record straight. With respect thereto, the following is stated:

1. Cotton is the proposed assignee of the construction permit for WAHL(FM), Ocracoke, North Carolina. On July 3, 1997, CMC submitted a "Supplement to Petition for Reconsideration" in the instant proceeding, which consisted of a copy of the letter ruling of the Assistant Chief, Audio Services Division, Reference 1800B3-DK ("Letter Ruling"). That ruling,

inter alia, denied the application for extension of the WAHL(FM) construction permit (File No. BMPH-970113JA). CMC claimed that the Letter Ruling would clear the way for the allotment of Channel 221A at Aurora, North Carolina. On July 9, 1997, Cotton submitted his "Response to Supplement to Petition for Reconsideration," pointing out that this contention is inaccurate in two respects. First, denial of the extension application is not yet final, and second, the cancellation of the construction permit would have no effect whatsoever on the Ocracoke allotment.

2. CMC's "Answer" brushes aside the fact that the Letter Ruling is not final, noting that it is in effect at the present time. Like most first year law students, Cotton is fully aware of the difference between an effective order and a final order. CMC appears to have missed the distinction. While the Letter Ruling currently is in effect, there can be no certainty whatsoever that the ruling will not be reversed. CMC complains that Cotton's statements concerning the filing of a petition for reconsideration are "purely speculative." "Answer" at 3. Cotton submits that, as a party to the proceeding, Cotton's knowledge about his own plans for seeking reconsideration can hardly be termed speculation. Nonetheless, in point of fact, Cotton and Ocracoke Broadcasters did file a Petition for Reconsideration of the Letter Ruling on August 4, 1997. Thus, what would be "purely speculative" are any predictions as to the future status of the WAHL(FM) construction permit. Therefore, it would be foolhardy for the Commission to take any actions based upon the current status of the WAHL(FM) construction permit.

3. CMC also argues in its "Answer" that the allotment co-ordinates for Channel 224C1 at Ocracoke present no obstacle to CMC's proposed allotment of Channel 221A to Aurora because the Ocracoke allotment is "substandard." This contention is false. In the first instance, CMC is

the only party which has found the allotment to be in any way "substandard." The Commission's staff expressly examined the question of city grade coverage from the proposed allotment reference site prior to granting Ocracoke Broadcasters' upgraded construction permit. Upon initial review of the application, the Commission's staff issued a letter requesting further information concerning the allotment reference site included in the application, including a showing that a facility could provide 70 dBu service to the entire community of license from that location. In response, Ocracoke Broadcasters submitted an amendment, slightly amending the reference co-ordinates and demonstrating the required 70 dBu coverage of the entire Village of Ocracoke. The Commission's staff found that showing to be acceptable, as it granted the upgrade application. Thus, far from finding any deficiency in the allotment, the Commission's staff has previously examined the very issue which CMC now raises and has found that the allotment is not substandard.

4. Moreover, the record in this proceeding also demonstrates that the Ocracoke allotment fully complies with the Commission's rules and policies. Technical Comments submitted by Aurora Broadcasting with its "Opposition to Petition for Reconsideration" filed February 13, 1997 in this proceeding include a technical study showing that WAHL(FM)'s proposed Class C1 operation would provide the requisite 70 dBu contour to the community of Ocracoke. It should be remembered that Aurora Broadcasting is a party completely independent from Ocracoke Broadcasters and had reached this conclusion on its own. Thus, the Commission, Ocracoke Broadcasters, and an independent party have all concluded that the Channel 224C1 allotment is not substandard.

5. Although CMC has tried every backdoor method in its attempt to clear the Ocracoke

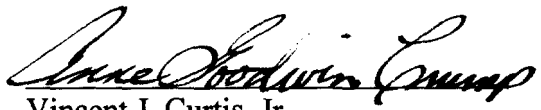
allotment out of its way, CMC has yet to take the necessary steps to seek deletion or downgrade of the allotment. CMC has not requested the deletion or downgrading of the Ocracoke allotment in this proceeding, nor has it filed a rule making petition seeking these results. Rather, CMC is seeking to have the Commission's staff do its dirty work for it, instead of following proper procedures itself.

6. The cases cited by CMC are entirely inapposite. In both Pinckneyville, Illinois, 41 R.R.2d 69 (B/cast Bur. 1977) and Jacksonville, Pine Knoll Shores, and Harkers Island, North Carolina, 10 FCC Rcd 13159 (Policy & Rules Div. 1995), the Commission found that there were no transmitter sites which could be used in compliance with the Commission's Rules. CMC has not made such a showing, nor even raised such an argument. The same situation obtained in ECI License Company, Inc., 11 FCC Rcd 1797, in which the applicant had itself demonstrated that no fully-spaced sites were available, and the Audio Services Division referred the matter to the Allocations Branch for "appropriate action." In Boone Biblical College, 15 F.C.C.2d 861 (1969), the full Commission made it clear that the appropriate action was institution of a rule making proceeding to delete the allotment. In this instance, however, there is no cause to commence such a proceeding, as the Commission's staff has not concluded that there is any deficiency in the Channel 224C1 allotment at Ocracoke. In fact, as set forth above, the Commission's staff has concluded just the opposite.

7. Accordingly, Cotton hereby submits his Reply to CMC's "Answer" and respectfully requests that the Reply be accepted and considered in the above-captioned proceeding in order to set the record straight.

Respectfully submitted,

BRUCE S. COTTON

By: 
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August 15, 1997

CERTIFICATE OF SERVICE

I, Lorretto J. Scott, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that copies of the foregoing "Request for Leave to File Reply and Reply to Answer to Response to Supplement to Petition for Reconsideration" were sent this 15th day of August, 1997, by first-class United States mail, postage prepaid to:

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